

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION**

MARIA ISABEL CARDENAS, AS
REPRESENTATIVE OF THE ESTATE
OF DANIEL CARDENAS

VS.

CITY OF DONNA, TEXAS

§
§
§
§
§
§
§
§

CIVIL ACTION NO.

JURY REQUESTED

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant **CITY OF DONNA, TEXAS** files this Notice of Removal of the present cause from the 139th Judicial District Court of Hidalgo County, Texas, in which it is now pending, to the United States District Court for the Southern District of Texas, McAllen Division, and would show unto the Court as follows:

I.

THE PETITIONER

1.01 The **CITY OF DONNA, TEXAS** is the Petitioner and Defendant in this lawsuit.

II.

THE LITIGATION

2.01 Petitioner is the Defendant in the civil lawsuit entitled *Maria Isabel Cardenas, as Representative of the Estate of Daniel Cardenas*, Cause No. C-5479-16-C, pending in the 139th Judicial District Court of Hidalgo County, Texas. Plaintiff filed her Petitioner's Verified Petition to Take Deposition Before Suit on December 9, 2016. A copy of Plaintiff's Petition is attached hereto as **Exhibit No. 2** in the Index of Exhibits attached hereto as **Exhibit - A**.

III.

REMOVAL

3.01 Defendant is filing this Notice of Removal pursuant to 28 U.S.C. §1441(a), which provides that

any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

Federal district courts "shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

3.02 Defendant City of Donna, Texas, is a governmental entity existing and doing business in Hidalgo County, Texas, and the State of Texas.

3.03 Additional basis and authority for the removal of this action is pursuant to 42 U.S.C. §1446(b), which provides:

The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the Defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the Defendant, whichever period is shorter.

3.04 This Notice of Removal is being filed within thirty (30) days of Defendant's notice of Plaintiff's Petition insofar as Defendant obtained a copy of Plaintiff's pleading through a telefax copy provided to its City Attorney on or about December 16, 2016, though Defendant has been formally served in this action. Upon receipt and review of the Petition, Defendant determined Plaintiff requested this deposition to investigate federal causes of action for violation of the U.S. Constitution and laws of the United States, and this Notice of Removal is therefore timely filed.

IV.

4.01 True and correct copies of all pleadings and orders signed by the state judge contained in the County Clerk's File are attached hereto together with an Index of Exhibits attached hereto as **Exhibit - A**. A copy of the Docket Sheet from the District Clerk's office of Hidalgo County, Texas, for this lawsuit is attached as **Exhibit No. 1** to the Index of Exhibits attached hereto as **Exhibit - A**. Copies of all process, pleadings and orders served upon Defendant are attached to the Index of Exhibits attached hereto as **Exhibit - A**. Attached hereto as **Exhibit - B** is a list of all counsel of record in this case.

V.

5.01 The claims asserted by Plaintiff could have been filed in this Federal Court pursuant to Federal Rule of Civil Procedure 27(a) and 28 U.S.C. §1331. Therefore, this Court has jurisdiction over this removal action pursuant to 28 U.S.C. §1441(a) since this is a civil action of which the Federal District Courts have original jurisdiction founded on a claim arising out of the Constitution or laws of the United States.

VI.

6.01 Defendant **CITY OF DONNA, TEXAS** hereby demands a trial by jury.

VII.

7.01 Defendant **CITY OF DONNA, TEXAS** hereby represents to this Court that the Hidalgo District Clerk and all parties and their counsel are receiving notice and copies of all the pleadings associated with Defendant's Notice of Removal.

WHEREFORE, PREMISES CONSIDERED, Defendant **CITY OF DONNA, TEXAS** prays for removal of the above entitled cause of action from 139th District Court of Hidalgo County, Texas, to this Court.

Signed on this the 28th day of December, 2016.

Respectfully submitted,

/s/ J. Arnold Aguilar

J. Arnold Aguilar
Attorney-in-Charge
State Bar No. 00936270
S.D. Tex. No. 6822

AGUILAR ☆ ZABARTE, LLC

Of Counsel

990 Marine Drive

Brownsville, Texas 78520

Telephone : (956) 504-1100

Facsimile : (956) 504-1408

Attorney for Defendant

CITY OF DONNA, TEXAS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing **NOTICE OF REMOVAL** will on this the 28th day of December, 2016, be automatically accomplished through the Notice of Electronic Filing upon the following:

Chris Franz

Peralez Franz, LLP

1416 Dove Avenue

McAllen, Texas 78504

service@peralesfranzlaw.com

/s/ J. Arnold Aguilar

J. Arnold Aguilar